

## **REMARKS**

### **Claim Rejections**

Claims 21-31 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 21-32 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over Barts et al. (20020082893) in view of Nagagawa et al. (20010047237).

It is noted that the references to Barts et al. and Nagagawa et al. were initially cited by the Examiner in the outstanding Final Office Action. Thus, this Amendment represents Applicant's initial opportunity to respond to the rejections based upon these references.

### **Claim Amendments**

By this Amendment, Applicant has cancelled claims 24, 27, and 30 and has amended claim 21 to include the limitations of cancelled claims 27 and 30. Claims 28, 29, and 31 have been amended to adjust their dependancy. It is believed that the amended claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art.

In response to the Examiner's rejection under 35 U.S.C. §112, second paragraph, of claims 21 and 30, claim 21 has been amended to clarify that the remaining goods (i.e., those goods not distributed) are returned by vehicle. Furthermore, with regard to the "returning control operation" limitation (which "occurs during and after vehicles are returned") originating from claim 30, Applicant respectfully submits that the skilled artisan would appreciate (in view of the earlier "by vehicle" amendment) that the goods are returned by vehicle when the vehicles are returned. Applicant further submits that the skilled artisan would also understand, without a specific recitation thereof, that the goods can be unloaded from the vehicles, after the vehicles return, by the various known means for doing so, i.e., worker, forklift, etc.

Furthermore, Applicant respectfully reminds the Examiner that Applicant is not required to disclose every specific parameter in a cited patent application. For

example, *DeGeorge v. Bernier*, 768 F.2d 1318, 1324, 226 USPQ 758 (Fed. Cir. 1985) states:

"A patent must contain a description that enables one skilled in the art to make and use the claimed invention.... 'An inventor need not, however, explain every detail since he is speaking to those skilled in the art.' In *re Howarth*, 654 F.2d 103, 105, 210 USPQ 689, 691 (CCPA 1981). 'Not every last detail is to be described, else patent specifications, would turn into production specifications, which they were never intended to be.' In *re Gay*, 309 F.2d 769, 774, 50 CCPA 725, 733, 135 USPQ 311, 316 (CCPA 1962)."

In view of the above, Applicant also submits that the "cut-in" operation is fully described in, for example, [0042], [0073, and [0077] as a "cut-in vehicle arrangement operation," as would be appreciated by the skilled artisan.

The amended claims are directed toward: a method for managing transportation and distribution (T&D) of goods from one place to at least one destination, which comprises the steps of: a) processing a plan operation for distributing the **goods** after accepting orders and before distribution utilizing a supporting T&D system, the processing step a) including the steps of: i) establishing T&D data including customer information, distribution destination information, planned distribution time, road size, vehicle size, destination coordination, and time and distance between subsequent destinations; ii) determining vehicle-arrangement for vehicles; and iii) generating at least a supporting T&D result; b) **monitoring and controlling the distribution of the goods, a return of a remainder of the goods by the vehicles after the distribution of the goods**, and a return route of the vehicles utilizing a distribution and returning process system based on the supporting T&D result, the monitoring and controlling step b) including the steps of: i) controlling and monitoring an operation; ii) maintaining and evaluating results of the monitoring and controlling; and iii) producing at least one evaluation of the results of the monitoring and controlling; and c) analyzing the supporting T&D result and the at least one evaluation of the results of the monitoring and controlling during the distribution of

the goods, the return of the remainder of the good after distribution, and the return route of the vehicles utilizing a transportation result management system, the analyzing step c) including the steps of: i) managing cost, expense, benefit, and reward; ii) managing drivers and vehicles; and iii) managing resources and energy, ***wherein the monitoring and controlling step b) includes the steps of: a) performing an in-and-out control operation; b) performing a monitoring and controlling operation; and c) performing a returning control operation, wherein, in the performing step c), the returning control operation occurs during and after the vehicles are returned.***

Another embodiment is directed toward: a transportation and distribution (T&D) management system for managing transportation and distribution of goods from one place to at least one destination, the T&D management system comprising: a) an geographic information system application module calculating shortest distances between points of origin and points delivery according to data of customers and distributions, the points of delivery including distances between preceding points of delivery and subsequent points of delivery; b) an vehicle-arrangement and path plan module communicating with the geographic information system and arranging sequences of distributions depending on the data of customers and distributions, the vehicle-arrangement and path plan module developing and sending an order path network simulation to the geographic information system application module for displaying distribution paths; c) a vehicle and driver assignment module communicating with the vehicle-arrangement and path plan module and providing paths and data of transportation companies, characteristics of each vehicle and driver, and costs for process vehicle and driver assignment and ***goods*** distribution for each trip; and d) a monitoring and recording module communicating with the vehicle-arrangement and path plan module and monitoring and recording the ***goods during distribution***, vehicle running conditions, vehicle paths and distribution times.

Barts et al. teach a system and method focused on how to deliver ***vehicles*** from one place to another (for example, from car manufacture to car dealer). In comparison, Applicant teaches and recites a method about how to deliver ***goods*** via delivery vehicles. Although, in Applicant's invention delivery vehicles are

controlled and organized in order to deliver the goods and return the remaining goods, the attributes of a vehicle delivering system are different than that of a system designed to deliver goods. For example, in FIG.5A of Barts et al., it must be considered whether the parking capacity is exceeded in order to determine whether to ship the vehicles. Furthermore, when shipping the vehicles, Barts et al. need to consider whether to use a car hauler or rail car. In any event, it is most important to note that Barts et al. never teach or suggest its technology can be used for the delivery of goods.

Nakagawa et al. teach a transportation arrangement center for creating an operations plan between shippers, distribution centers and transportation bases. First, it is important to note that Nakagawa et al. fail to teach an Order Type, or Different Order Types included pick-up (goods), delivery, routing, and return. Furthermore, Nakagawa et al. lacks the integration of all different Order Types. Second, Nakagawa's invention lacked the management of different Depot Types; each Depot has its own role, function and responsibility. Nakagawa et al. has not suggested how to harmonize the different functions and responsibilities of each Depot. Next, Nakagawa et al.'s invention lacks the function of managing the Real-time Vehicle Position, which is an important function in real-time delivery system. Finally, Nakagawa et al.'s invention lacks the function of processing Order Batch. The frequency of taking orders will very much affect the delivery arrangement. In comparison, Applicant provides a flexible order cut-in function, which makes the delivery arrangement more flexible; this feature is not suggested in Nakagawa et al.

Even if the Examiner is able to teach or suggest the above-noted limitations, it is important to note that neither Barts et al. nor Nakagawa teaches the return of the remaining goods after the distribution, a major feature of Applicant's invention.

Even if the teachings of Barts et al. and Nakagawa et al. were combined, as suggested by the Examiner, the resultant combination does not suggest: a method for managing transportation and distribution (T&D) of goods from one place to at least one destination, which comprises the steps of: a) processing a plan operation for distributing the goods after accepting orders and before distribution utilizing a supporting T&D system, the processing step a) including the steps of: i) establishing

T&D data including customer information, distribution destination information, planned distribution time, road size, vehicle size, destination coordination, and time and distance between subsequent destinations; ii) determining vehicle-arrangement for vehicles; and iii) generating at least a supporting T&D result; b) monitoring and controlling the distribution of the goods, a return of a remainder of the goods by the vehicles after the distribution of the goods, and a return route of the vehicles utilizing a distribution and returning process system based on the supporting T&D result, the monitoring and controlling step b) including the steps of: i) controlling and monitoring an operation; ii) maintaining and evaluating results of the monitoring and controlling; and iii) producing at least one evaluation of the results of the monitoring and controlling; and c) analyzing the supporting T&D result and the at least one evaluation of the results of the monitoring and controlling during the distribution of the goods, the return of the remainder of the good after distribution, and the return route of the vehicles utilizing a transportation result management system, the analyzing step c) including the steps of: i) managing cost, expense, benefit, and reward; ii) managing drivers and vehicles; and iii) managing resources and energy, wherein the monitoring and controlling step b) includes the steps of: a) performing an in-and-out control operation; b) performing a monitoring and controlling operation; and c) performing a returning control operation, wherein, in the performing step c), the returning control operation occurs during and after the vehicles are returned.

Nor does the combination suggest: a transportation and distribution (T&D) management system for managing transportation and distribution of goods from one place to at least one destination, the T&D management system comprising: a) an geographic information system application module calculating shortest distances between points of origin and points delivery according to data of customers and distributions, the points of delivery including distances between preceding points of delivery and subsequent points of delivery; b) an vehicle-arrangement and path plan module communicating with the geographic information system and arranging sequences of distributions depending on the data of customers and distributions, the vehicle-arrangement and path plan module developing and sending an order path network simulation to the geographic information system application module for

displaying distribution paths; c) a vehicle and driver assignment module communicating with the vehicle-arrangement and path plan module and providing paths and data of transportation companies, characteristics of each vehicle and driver, and costs for process vehicle and driver assignment and goods distribution for each trip; and d) a monitoring and recording module communicating with the vehicle-arrangement and path plan module and monitoring and recording the goods during distribution, vehicle running conditions, vehicle paths and distribution times.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious, unless there is some direction in the selected prior art patents to combine the selected teachings in a manner so as to negate the patentability of the claimed subject matter. This principle was enunciated over 40 years ago by the Court of Customs and Patent Appeals in In re Rothermel and Waddell, 125 USPQ 328 (CCPA 1960) wherein the court stated, at page 331:

The examiner and the board in rejecting the appealed claims did so by what appears to us to be a piecemeal reconstruction of the prior art patents in the light of appellants' disclosure. ... It is easy now to attribute to this prior art the knowledge which was first made available by appellants and then to assume that it would have been obvious to one having the ordinary skill in the art to make these suggested reconstructions. While such a reconstruction of the art may be an alluring way to rationalize a rejection of the claims, it is not the type of rejection which the statute authorizes.

The same conclusion was later reached by the Court of Appeals for the Federal Circuit in Orthopedic Equipment Company Inc. v. United States, 217 USPQ 193 (Fed.Cir. 1983). In that decision, the court stated, at page 199:

As has been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be non-obvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the

claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of non-obviousness in a court of law.

In In re Geiger, 2 USPQ2d, 1276 (Fed.Cir. 1987) the court stated, at page 1278:

We agree with appellant that the PTO has failed to establish a *prima facie* case of obviousness. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination.

Applicant submits that there is not the slightest suggestion in either Barts et al. or Nakagawa et al. that their respective teachings may be combined as suggested by the Examiner. Case law is clear that, absent any such teaching or suggestion in the prior art, such a combination cannot be made under 35 U.S.C. § 103.

Neither Barts et al. nor Nakagawa et al. disclose, or suggest a modification of their specifically disclosed structures that would lead one having ordinary skill in the art to arrive at Applicant's claimed structure. Applicant hereby respectfully submits that no combination of the cited prior art renders obvious Applicant's amended claims.

### **Summary**

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested.

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It is not believed that the foregoing amendments to claim 21 requires any further searching and/or consideration on the part of the Examiner, since such amendment merely includes incorporating the language of canceled claim 27 and 30, as well as clarifying the meanings of a few recited terms. Thus, the Examiner would have inherently searched this subject matter during the previous consideration of claim 21.

Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

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